

FILED
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

10 MAR 16 AM 10:17
X

MICHAEL GLENN and HASHAWN MILLER

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Plaintiffs,

-against-

COMPLAINT
03-10-1178

THE CITY OF NEW YORK, and P.O. BRIAN WOOD,
Shield No. 5728, and P.O.'s "JOHN DOE" #1-10,
Individually and in their Official Capacity (the name John
Doe being fictitious, as the true names are presently
unknown),

JURY TRIAL DEMANDED

ECF CASE

Defendants.

TOWNES, J.

MANN, M.J.

-----X
Plaintiffs MICHAEL GLENN and HASHAWN MILLER, by their attorneys, Cohen &
Fitch LLP, complaining of the defendants, respectfully allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of their civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343.

VENUE

4. Venue is properly laid in the Eastern District of New York under U.S.C. § 1391(b), in that this is the District in which the claim arose.

JURY DEMAND

5. Plaintiffs respectfully demand a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

6. Plaintiff MICHAEL GLENN is an African American male, a citizen of the United States, and at all relevant times a resident of the City and State of New York.

7. Plaintiff HASHAWN MILLER is an African American male, a citizen of the United States, and at all relevant times a resident of the City and State of New York.

8. Defendant CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

9. Defendant CITY OF NEW YORK maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, City of New York.

10. That at all times hereinafter mentioned the individually named defendants P.O. BRIAN WOOD and P.O.'s "JOHN DOE" #1-10 were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

11. That at all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the

official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

12. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

13. Each and all of the acts of the defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

FACTS

14. On or about April 9, 2009, at approximately 6:15 p.m., plaintiffs were lawfully present in the vicinity of Forbell Street and Loring Avenue, in the City of Brooklyn, State of New York.

15. At the aforesaid time and place, defendant police officers approached plaintiffs and asked them for their identification.

16. After plaintiffs complied, defendant police officers handcuffed plaintiffs' arms tightly behind their backs and searched plaintiffs.

17. While in police custody, defendants assaulted plaintiff HASHAWN MILLER, causing him multiple scrapes and bruising to his face and body.

18. Plaintiffs were later taken to a police precinct and stripped searched.

19. Notwithstanding the lack of any drug-related evidence found on plaintiffs pursuant to the aforementioned searches, defendants charged plaintiffs with Criminal Possession of a Controlled Substance in the Third Degree, Criminal Possession of a Controlled Substance in the Seventh Degree, Criminal Sale of Marijuana in the Fourth Degree and Unlawful Possession of Marijuana.

20. At no time had plaintiffs possessed, controlled or sold any narcotics on April 9, 2009.

21. As a result of his unlawful arrest, plaintiff MICHAEL GLENN spent approximately twenty-four (24) hours in police custody before the District Attorney's Office declined to prosecute his case.

22. As a result of his unlawful arrest, plaintiff HASHAWN MILLER spent approximately twenty-four (24) hours in police custody before the District Attorney's Office declined to prosecute his case.

23. As a result of the foregoing, plaintiffs MICHAEL GLENN and HASHAWN MILLER sustained, *inter alia*, loss of liberty, physical injuries, mental anguish, shock, fright, apprehension, embarrassment, humiliation, and deprivation of their constitutional rights.

FIRST CLAIM FOR RELIEF
DEPRIVATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983

24. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "23" with the same force and effect as if fully set forth herein.

25. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

26. All of the aforementioned acts deprived plaintiffs of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

27. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with all of the actual and/or apparent authority attendant thereto.

28. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

29. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

SECOND CLAIM FOR RELIEF
FALSE ARREST UNDER 42 U.S.C. § 1983

30. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "29" with the same force and effect as if fully set forth herein.

31. As a result of the aforesaid conduct by defendants, plaintiffs were subjected to illegal, improper and false arrest by the defendants and taken into custody and caused to be falsely imprisoned, detained, and confined, without any probable cause, privilege or consent.

32. As a result of the foregoing, plaintiffs' liberty was restricted for an extended period of time, they were put in fear for their safety, and they were humiliated and subjected to handcuffing and other physical restraints, without probable cause.

SECOND CLAIM FOR RELIEF
EXCESSIVE FORCE UNDER 42 U.S.C. § 1983

33. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "32" with the same force and effect as if fully set forth herein.

34. The level of force employed by defendants was objectively unreasonable and in violation of the constitutional rights of the plaintiff HASHAWN MILLER.

35. As a result of the aforementioned conduct of defendants, plaintiff HASHAWN MILLER was subjected to excessive force and sustained physical and emotional injuries.

THIRD CLAIM FOR RELIEF
UNLAWFUL AND UNREASONABLE SEARCH UNDER 42 U.S.C. § 1983

36. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "35" with the same force and effect as if fully set forth herein.

37. As a result of the forgoing plaintiffs were subjected to unreasonable and intrusive cavity searches that shocks the conscience in violation of their due process rights as set forth in the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States

38. As a result of the aforesaid conduct by defendants, plaintiff's person and possessions were illegally, improperly, and unreasonably searched without consent, a valid warrant, probable cause, privilege or consent, in violation of their constitutional rights as set forth in the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

FOURTH CLAIM FOR RELIEF
MUNICIPAL LIABILITY

39. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "38" with the same force and effect as if fully set forth herein.

40. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

41. Defendants arrested and incarcerated plaintiffs in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said arrest and incarceration would jeopardize plaintiffs' liberty, well-being, safety and constitutional rights.

42. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials, with all the actual and/or apparent authority attendant thereto.

43. The acts complained of were carried out by the aforementioned individual

defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

44. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department include, but are not limited to, the following unconstitutional practices:

- i. arresting innocent persons notwithstanding the existence of credible evidence which exonerates the accused of any criminal wrongdoing;
- ii. conducting intrusive strip searches and body cavity inspections of arrested individuals regardless of particularized suspicion.

45. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constituted a deliberate indifference to the safety, well-being and constitutional rights of plaintiffs.

46. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiffs as alleged herein.

47. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the constitutional violations suffered by plaintiffs as alleged herein.

48. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiffs were incarcerated unlawfully for approximately twenty four (24) hours and subject to an intrusive strip search.

49. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of plaintiffs.

50. Defendants, collectively and individually, while acting under color of state law,

acquiesced in a pattern of unconstitutional conduct by subordinate police officers, and were directly responsible for the violation of plaintiff's constitutional rights.

51. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constituted deliberate indifference to the safety, well-being and constitutional rights of plaintiffs.

52. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiffs as alleged herein.

53. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the constitutional violations suffered by plaintiffs as alleged herein.

54. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiffs were unlawfully arrested and detained, and subjected to excessive Force.

55. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating plaintiffs' constitutional rights.

56. The acts complained of deprived plaintiffs of their rights:

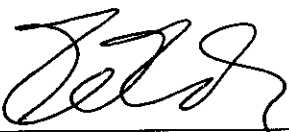
A. Not to be deprived of liberty without due process of law;

- B. To be free from seizure and arrest not based upon probable cause;
- C. To be free from malicious abuse of process;
- D. Not to have excessive force imposed upon them;
- E. To be free from unlawful search;
- F. Not to have summary punishment imposed upon them; and
- G. To receive equal protection under the law.

57. As a result of the foregoing, plaintiffs are entitled to compensatory damages in the sum of one million dollars (\$1,000,000.00) and are further entitled to punitive damages against the individual defendants in the sum of one million dollars (\$1,000,000.00).

WHEREFORE, MICHAEL GLENN and HASHAWN MILLER, demand judgment in the sum of one million dollars (\$1,000,000.00) in compensatory damages and one million dollars (\$1,000,000.00) in punitive damages, plus reasonable attorney's fees, costs, and disbursements of this action.

Dated: New York, New York
March 15, 2010

BY: 
GERALD M. COHEN (GC-0914)
COHEN & FITCH LLP
Attorneys for Plaintiff
225 Broadway, Suite 2700
New York, N.Y. 10007
(212) 374-9115